

October 27, 2004

By Electronic Filing

Chairman Michael Powell
Federal Communications Commission
445 12th St., SW
Washington, D.C. 20554

Re: Written Ex Parte filed in the proceedings captioned: IP-Enabled Services proceeding - WC Docket 04-36; In the Matter of Vonage Holding Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission, WC Docket No. 03-211

Dear Chairman Powell:

It has been widely reported that the Commission is considering taking up the issue of the jurisdictional status of voice over Internet protocol (VoIP) services separately from the range of issues raised in the IP Enabled Services and related proceeding. The National Consumers League believes such an approach would not benefit consumers and would not be the best way to implement a regulatory framework for new communications services.

Premature action would only exacerbate existing inefficient trends. Given that carriers like Vonage terminate in excess of 90 percent of their traffic to the legacy network, but do not now pay into the existing intercarrier and universal service regimes at the same levels as their competitors, current POTS subscribers already seems to be subsidizing their customers. Taking a more comprehensive approach that includes crucial decisions in the outstanding intercarrier compensation (IC) and universal service (US) dockets either in advance of, or simultaneously with, jurisdictional determinations can attenuate somewhat the impact of that subsidy.

It also clear that, until the FCC resolves outstanding IC and US issues, as VoIP penetration rates increase so will the upward pressure on rates for subscribers who cannot afford, do not want, or have no access to broadband. If the FCC acts in a piecemeal fashion, it will give VoIP providers perverse incentives to dig in their heels on the pending IP Enabled Services, universal service, and intercarrier compensation reform dockets. Not only is the funding base for state universal service programs potentially in peril, but the federal fund could face increased pressure as well.

The National Consumers League is also concerned about the other likely impacts on consumers. The states, because of their closer proximity to consumers, have always been better positioned and able to help customers to get complaints resolved than federal agencies. This ruling, even if it does not explicitly completely preempt all state oversight of VoIP service, will likely set the base for arguments that state commission oversight of billing disputes, complaints, number distribution/conservation should also be eliminated.

Whatever the FCC ultimately decides on jurisdictional issues, we strongly believe that it should resist the urge to act in piecemeal fashion. Instead, it should first complete its long outstanding intercarrier compensation proceeding, and then move to act thoughtfully and deliberately on all the issues presented in the IP Enabled Service proceeding simultaneously,

taking all stakeholder views into account. Only a careful, comprehensive approach will ensure that consumers are well served and adequately protected. We appreciate your considering our perspective on these issues.

Sincerely,

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